IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11624 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PANDIT JAGDEEP JANAKRAI

Versus

STATE OF GUJARAT THRO' 1/1ST CHIEF SECRETARY

Appearance:

1. Special Civil Application No. 11624 of 2003
PARTY-IN-PERSON for Petitioner No. 1
MR.M.S. RAO, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 17/01/2004

ORAL JUDGEMENT

The present petition is filed for the relief which are set out as under:

"(a) At the end of the above say the petitioner prays this H'ble court to allow this application.

(b) At the end of the above says the petitioner prays this H'ble Court to issue the notices to the respondents calling their says;

(c) At the end of the above says the petitioner prays this H'ble Court to issue the order through the power exercised under the extraordinary jurisdiction under article 226 of the constitution of India to strike down the instrument annexure 'A'.

(d) At the end of the above says the petitioner prays this H'ble Court to issue the order that the inordinate delay made in communicating the adverse remark of any annual confidential report shall not be taken in account for the purpose of denying the promotion, senior scale etc. to the concerned employee.

(e) At the end of the above says the petitioner prays this H'ble Court to order and grant any other and further relief those are deemed fit and fair in my lords' view as per the facts and circumstance of the case during the course of the hearing of the petition as the petitioner may pray as per the requirements in excess to the here said and prayed reliefs during the course of further hearing of the petition.

(f) At the end of the above says the petitioner prays this H'ble Court to grant any other relief and further relief as my lords' deem fit and fair in interest of the justice."

Mr.Pandit Jagdeep Janakrai submitted that the Govt. has throttled the judicial remedy available to the Govt. employees by issuing a circular dated 13.8.1998, a copy of which is at Annexure A(c). The party in person strenuously argued that by clause (iii) of the said circular wherein it is provided that in case on verification, it is found that adverse remark(s) made in the Confidential Report of an employee/ officer is/ are not communicated to the concerned employee/ officer, the concerned employee/ officer should be communicated the same and an explanation be obtained from the concerned employee/ officer within fifteen days and thereafter a decision be taken on that adverse remark, and only after

such exercise is completed the file of the concerned employee be submitted to the Departmental Selection Committee. The submissions of party in person are without any reference to context and hence not relevant. The circular dated 13.8.1998 is issued taking into consideration the earlier circulars of General Administration Department dated 29.1.1977, 24.1.1981, 30.3.1982 and 11.12.1996. In fact the preamble of this circular (dated 13.8.1998) is very clear. It is stated therein that the aforesaid four circulars of the Government provide for timely communication of the adverse remark, i.e. within six weeks from the date on which the exercise of the Confidential Report is completed. The present circular is required to be issued as is mentioned, only because despite the aforesaid four circulars, it came to the notice of the Govt. that adverse remarks are not communicated to the concerned employees within the prescribed time limit and therefore, when the case of the concerned employee comes before the Selection Committee, lot of difficulty is caused. Therefore, by circular dated 13.8.1998 (the present one) the Govt. has reiterated that the adverse remark be communicated to the concerned employees latest by 1st July of every year and to overcome the aforesaid difficulty, it is provided in clause (i) that if the said exercise is not completed within the prescribed time limit then sufficient reasons will be required to be set out.

2. In the considered opinion of this Court the circular dated 13.8.1998 does not in any way throttle the remedy available to the concerned employee because it provides in clause (ii) that in case exercise is not completed by 1st July of every year, the Department/ authority/ concerned officer will have to give sufficient reasons for the same. Circular dated 13.8.1998 (the present one) is issued only for the purpose of avoiding difficulties arising while considering the cases of employees by the Departmental Selection Committees. The circular does not say a word that the contention of delay, if any, in communicating the adverse remarks cannot be agitated. Belated communication of adverse remarks can always be the subject matter of challenge by the individual, more so when this circular provides that reasons are required to be given by the Department for late communication. The present circular does not permit the late communication of confidential remarks. The circular has not provided that if the exercise set out in clause (iii) of the said circular is undertaken then lapse on the part of the Department of belated communication gets condoned.

3. In view of the above observations, the present petition is dismissed as misconceived. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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